S.B.Civil writ petition No.6487/2007

LRs of Shri Kanhaya Lal
vs
Jabbar Singh & Ors.

Date of order : 13.11.2007.

HON'BLE MR. PRAKASH TATIA, J.

Mr.PR Singh,for the petitioner.

<><><>

Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order of the trial court dated 5th Sept., 2007 by which the trial court decided the issue no.1 against the plaintiff-petitioner and held that the suit of the plaintiff against the Sarpanch of the Gram Panchayat is liable to be rejected for want of notice and because of the reason of not impleading the Gram Panchayat as party.

Learned counsel for the petitioner submits that plaintiff filed the suit for injunction against six defendants under assumption that six defendants are only persons responsible for illegal act and when the plaintiff came to know about the conduct of the Sarpanch of Gram Panchayat concerned, then he immediately moved an application for impleading

Sarpanch of the Gram Panchayat as party under Order 1 Rule 10 CPC. The Sarpanch of the Gram Panchayat was impleaded as party in the suit as defendant no.7. The defendant no.7 newly added party- the Sarpanch of the Gram Panchayat submitted an application under order 7 Rule 11 CPC for dismissal of the suit on the ground that no notice under Section 109 of the Panchayat Act has been served by the plaintiff upon the newly added defendant-Sarpanch of the Gram Panchayat. That application was dismissed by the trial court vide order dated 17th Sept., 1998, against which, a revision petition being SB Civil Revision Petition No.1148/1998 was preferred, which was decided by this Court on 2.1.2006. This Court observed that it will be appropriate that a proper issue be framed and that issue be decided as preliminary issue.

According to learned counsel for the petitioner, according to plaintiff the act of the respondent no.7- Sarpanch of the Gram Panchayat was absolutely illegal and he illegally issued Pattas and he had no right to enter into the property of the plaintiff and had no right to obstruct the way of the plaintiff. Therefore, the plaintiff sought relief against the Sarpanch of the Gram Panchayat. In all the facts and circumstances, there was no need of

giving notice under Section 109 of the Panchayat Act to the Sarpanch of the Gram Panchayat because his act was illegal and the act was in his personal capacity. Learned counsel for the petitioner also submitted that the order of the trial court deserves to be set aside because of the reason that by impleading the respondent no.7 as party in the suit, no prejudice can be caused to anybody.

I considered the submissions of learned counsel for the petitioner and perused the reasons given by the trail court in it impugned order dated 5th Sept., 2007. It is not in dispute that plaintiff impleaded Sarpanch as party by mentioning no name of the Sarpanch so as to implead him as party in person, but he has been impleaded by his post. Secondly, in view of the pleadings which have been quoted by the court below in its order itself it is clear that plaintiff very specifically pleaded that the Gram Panchayat Sania has issued the Pattas in violation of the Rules and law, therefore, the allegation was against the Gram Panchayat. Further, the Gram Panchayat was not impleaded as party and Sarpanch alone was impleaded as party then the trial court was right in holding that the allegations were against the Gram Panchayat and Sarpanch's acts as a Sarpanch can be on behalf of Gram Panchayat and therefore also, there was

necessity of service of notice under Section 109 of the Panchayat Act and that notice was not given, therefore, suit against Sarpanch is not maintainable.

In view of the above reasons, I do not find any illegality in the impugned order. Hence, the writ petition of the petitioner is dismissed having no merit.

(PRAKASH TATIA), J.

c.p.goyal/-